IN THE CIRCUIT COURT
THIRD JUDICIAL CIRCUIT
MADISON COUNTY, ILLINOIS

Sharon Price and Michael Pruth,
individually and on behalf of all others
similarly situated,

Plaintiffs

vs. Claim No. 00-L-112

Philip Morris Incorporated,

Defendant

BRIEF OF AMICI CURIAE,

Gregg Renkes, Attorney General of Alaska; Terry Goddard, Attorney General of Arizona; Mike Beebe, Attorney General of Arkansas; Ken Salazar, Attorney General of Colorado; M. Jane Brady, Attorney General of Delaware; Thurbert E. Baker, Attorney General of Georgia; Douglas Moylan, Attorney General of Guam; Lawrence Wasden, Attorney General of Idaho; Tom Miller, Attorney General of Iowa; Albert Benjamin Chandler III, Attorney General of Kentucky; Richard P. Ieyoub, Attorney General of Louisiana; Mike Cox, Attorney General of Michigan; Mike Hatch, Attorney General of Minnesota; Mike McGrath, Attorney General of Montana; Jon Bruning, Attorney General of Nebraska; Brian Sandoval, Attorney General of Nevada; Peter Heed, Attorney General of New Hampshire; Peter C. Harvey, Attorney General of New Jersey; Patricia A. Madrid, Attorney General of New Mexico; Roy Cooper, Attorney General of North Carolina; Wayne Stenehjem, Attorney General of North Dakota; Ramona V. Manglona, Attorney General of Northern Mariana Islands; Jim Petro, Attorney General of Ohio; W. A. Drew Edmondson, Attorney General of Oklahoma; Hardy Myers, Attorney General of Oregon; Mike Fisher, Attorney General of Pennsylvania; Anabelle Rodriguez, Attorney General of Puerto Rico; Patrick Lynch, Attorney General of Rhode Island; Henry McMaster, Attorney General of South Carolina; Larry Long, Attorney General of South Dakota; Paul G. Summers, Attorney General of Tennessee; Mark Shurtleff, Attorney General of Utah; William H. Sorrell, Attorney General of Vermont; Iver A. Stridiron, Attorney General of Virgin Islands; Jerry Kilgore, Attorney General of Virginia; Christine O. Gregoire, Attorney General of Washington; Darrell Vivian McGraw Jr., Attorney General of West Virginia; and The National Conference of State Legislatures

Amici Curiae Attorneys General are the chief law enforcement officers of 37 States and territories of the United States and the Commonwealth of Puerto Rico, acting in their official capacities on behalf of their respective States and jurisdictions. All the States except four are parties to the tobacco Master Settlement Agreement of November 23, 1998 ("the MSA"), to which Defendant Philip Morris Incorporated ("Philip Morris") is also a party. Those four states have separate settlement agreements with similar payment obligations.

Amicus Curiae National Conference of State Legislatures ("NCSL") is a bipartisan organization that serves the legislators and staff of the State, commonwealth, and territorial legislatures. NCSL serves as an advocate for the interests of the States in the American federal system and provides research, technical assistance and information exchange among policymakers on important state issues. NCSL's interest in this case is in protecting state finances during the most difficult state budget period in fifty years. Senator Angela Monson of Oklahoma is President of NCSL. In this brief, the undersigned Attorneys General and NCSL are collectively referred to as "the States."

Defendant Philip Morris has informed the States that the $12 billion appeal bond required in this Court's March 21, 2003 Judgment may prevent it from making the $2.6 billion payment to the States that the MSA requires it to make on April 15, 2003. The States submit this brief to advise the Court that many State programs, including vital public health programs, depend on MSA payments for their support and to urge this Court, after a full assessment of Defendant's financial condition, to exercise its discretion to set an appeal bond that does not interfere with the States' vital interests.[1] The States do not address and take no position on any other issue in this case.

INTERESTS OF THE AMICI

The MSA and the other State settlement agreements with the tobacco companies arose from lawsuits brought by the States against the tobacco companies beginning in 1994. The settlements were the culmination of aggressive, time-consuming litigation by the States that was vigorously defended by the tobacco industry. The tobacco companies agreed to settle only after the States had engaged in an enormous amount of discovery and negotiation. Some cases were in trial at the time of settlement. The settlements reached included an unprecedented array of restrictions on advertising, promotion and marketing of cigarettes. The settlements also provided for payments to the States in compensation for alleged violations of state health and welfare and consumer protection laws and policies. The payments were intended to provide general monetary relief to the States, including past and prospective relief to the States for actual harm caused by cigarette smoking and to fund anti-smoking public health and education programs. Millions of tobacco industry documents first discovered in the litigation brought by the States were required to be made publicly accessible as a result of the MSA, and much of the litigation currently being brought against the tobacco companies would not have been possible without the work done by the States. The States have a strong interest in preserving the value of the settlements they fought for and won, and the results in this lawsuit should not prejudice those settlements.

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[1] Payments to the four States with separate agreements, Mississippi, Minnesota, Florida, and Texas, are similarly affected and are as important for those States as MSA payments are for MSA jurisdictions.

The States' objective is to ensure that Philip Morris meets *all* its legal obligations to consumers and to public entities. Philip Morris already has significant ongoing obligations to the States under the MSA and the other State settlement agreements, including the obligation to make annual MSA payments each April 15. If the judgment in this case is upheld on appeal, Philip Morris will be required to pay damages. The States seek to permit the appellate process to go forward without endangering the payments that are due to the States.

State Attorneys General have been informed by Philip Morris that it is "presently uncertain" whether it will make its April 15 MSA payment because of the need to post an appeal bond in this proceeding. The States have already budgeted the money, most of it for public health programs, in the expectation that it would be paid.[2] The payment each State stands to lose if Philip Morris fails to make its April 15 payment is shown at Tab A. Any delay in the receipt of this payment will have significant consequences. The MSA States have notified Philip Morris that if payment is not made as scheduled, enforcement actions will be commenced.

There are also potential ramifications to States if payments are delayed or if Philip Morris seeks protection through bankruptcy. Delay in payments would impair public health programs funded by MSA payments. Where MSA payments have been pledged to service bonds, a delay in payment could adversely affect the interests of bondholders.

The States respectfully request this Court to fashion appropriate arrangements that will secure the judgment under Illinois law but that also respect and support the continued

[2] Each state determines for itself the programs that the settlement payments are to support. Nationally, more than half of the settlement payments have been used for public health programs. See note 6, below.

payments to the States. The primary purpose of an appeal bond is to ensure that the defendant will be able to pay the costs of the judgment after review on appeal. Under Illinois law, the court has considerable discretion in setting the terms of the bond, including the amount, the timing of payment, and the form of the security. The States request this Court in the exercise of its discretion (1) to recognize Philip Morris's existing annual payment obligations to the States and the importance of those payments to the States; (2) to take account of the fact that an appeal will likely take two or three years; and (3) to consider alternative methods of providing security for the judgment that would not jeopardize payments to the States. For example, this Court might consider whether cash flows that will become available to Philip Morris during the pendency of the appeal might be accessed gradually during the course of the appeal to provide security for the plaintiffs rather than to require the immediate posting of the entire bond.

BACKGROUND

In November 1998, 46 States, the District of Columbia, the Commonwealth of Puerto Rico, and four United States territories (the "Settling States") joined in signing the Master Settlement Agreement ("MSA") to settle the States' tobacco-related claims against the major tobacco companies ("Original Participating Manufacturers," or "OPMs"), including the Defendant in this case. The MSA was the culmination of extensive litigation begun by several states in 1994. Prior to the MSA, four States, Mississippi, Minnesota, Florida and Texas, had reached separate settlement agreements with the major tobacco companies. All the remaining States and other jurisdictions of the United States reached agreement with the major tobacco companies in November 1998.

The purpose of the MSA was to resolve the claims of the States by (1) imposing important restrictions on the advertising, marketing, and promotion of cigarettes by the major tobacco companies; (2) requiring the tobacco companies to make annual payments to the States in perpetuity, totaling, through 2025, over $206 billion[3]; and (3) establishing a Foundation, funded by the tobacco companies, to engage in a program of public education and counter-advertising against tobacco usage. In return for these concessions, the Settling States agreed to release the tobacco companies from liability for a broad range of claims.

The Supreme Court has characterized the MSA as "a landmark agreement," *Lorillard Tobacco Co. V. Reilly,* 533 US 525, 533 (2001), and the MSA has had far-reaching public health and economic effects. Since the MSA was executed, tobacco usage in the United States has declined substantially, and underage tobacco usage has declined by an even greater percentage, reversing a decade of increases.[4] Settlement payments by the companies have provided the resources for effective State anti-tobacco campaigns, and reductions in youth smoking have been most dramatic in those States that have used settlement revenues to fund such programs.

On March 27, Defendant advised the States that "it is presently uncertain whether Philip Morris USA will be able to make" its April 15, 2003 MSA payment to the States because of the appeal bond. (Letter of Denise F. Keane to Attorney General Christine O.

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[3] When the separate settlements of Mississippi, Minnesota, Florida, and Texas are included, the total estimated payments to the States through 2025 exceed $246 billion.

[4] According to a recently released study by a federal inter-agency task force, since the MSA took effect there has been a marked decline in smoking among adolescents from the record levels immediately prior to the MSA's execution. See Federal Interagency Forum on Child and Family Statistics, America's Children: Key National Indicators of Well-Being (2001) (at http://www.childstats.gov /ac2001/behtxt.asp#beh1*)*

Gregoire of Washington, March 27, 2003, attached at Tab B.) Defendant is obligated to pay the States $2.6 billion on or before April 15, 2003, and it has payment obligations at a similar or higher level in perpetuity. These payment obligations represent more than half of the total payments due to the States under the MSA.[5] During the pendency of the appeal in this case, several such payments are likely to come due. If Defendant failed to make its April 15, 2003 payment, the States would take aggressive action to enforce their settlement rights, but there is no assurance that the States would actually receive an appreciable amount of this payment in the near term.

At a time when severe financial crisis has already caused many States to cut budgets for important programs, failure of the States to receive such payments promptly would severely threaten public health and safety programs in numerous States and undermine the progress in reducing youth smoking that has been made since the MSA was executed. For Fiscal Year 2003, more than 50 percent of MSA revenues nationwide were allocated to public health programs.[6] The resources that the States are attempting to protect are necessary for the States to fulfill core public health and safety responsibilities, and the interests they seek to advance are of fundamental importance.

ARGUMENT

I. This Court has authority to reduce the amount or modify the form of the appeal bond.

Although the Court's judgment initially required an appeal bond of $12 billion to cover the full amount of the judgment, interests, and costs, this Court has authority, after

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[5] The $2.6 billion that Philip Morris is obligated to pay on April 15, 2003 represents approximately 52.8% of the payments the four OPMs are required to make on that date.

[6] General Accounting Office, Report No. 03-407, States' Allocations of Fiscal Years 2002 and 2003 Master Settlement Agreement Payments, February, 2003.

notice, motion and opportunity for hearing, to reduce the amount of the bond required to stay the enforcement of the judgment. Illinois Supreme Court Rule 305(b) provides that "[o]n notice and motion, and an opportunity for opposing parties to be heard, the court may stay the enforcement of *any* judgment . . . upon such terms as are just." IL ST S. Ct. Rule 305(b) (emphasis added). Although a bond "shall be required" for money judgments, after notice and motion for opposing parties to be heard this Court has authority to alter *the amount* of such bond and the nature of the security provided if such an alteration is required to ensure that the stay is "upon such terms as are just." Id.

In *Stacke v. Bates,* the Supreme Court of Illinois held that "[c]ourts have an inherent power to grant a stay pending appeal, and whether or not to do so is a discretionary act." 138 Ill.2d 295, 302, 562 N.E.2d 192, 195 (1990). Like this case, *Stacke* involved a money judgment and the Supreme Court recognized that Rule 305(b) authorized the court in a money judgment case, consistent with that inherent power, to consider numerous factors in determining what terms would be "just." ("There are numerous different factors which may be relevant when the court makes its determination and, by necessity, these factors will vary depending on the facts of the case," *Stacke* at 305.) As *Stacke* recognized, Rule 305(a) provides for a stay that is automatic upon fulfillment of the conditions in money judgment cases, and Rule 305(b) provides for discretionary stays in *all* cases on terms that would be "just." Both the text of Rule 305(b) and the Supreme Court's holding in *Stacke* support the exercise of discretion and consideration of the vital interests of the States in establishing the amount of the bond to be required in this case.

II. This Court should exercise its discretion to set an appeal bond that does not endanger vital interests of the States.

A. The appeal bond should not interfere with governmental functions.

In considering whether an appeal bond in less than the full amount of the award should be required as a condition of staying a judgment, courts consider numerous factors, including whether issuance of a stay will substantially harm other parties interested in the proceedings. *McSurely v. McClellan,* 697 F.2d 309, 317 (D.C. Cir. 1982) *cert. denied*, 474 U.S. 1005 (1985). In setting an appeal bond, a court "is not required to ignore the interests of other creditors when deciding how much security to make the defendant post as a condition of being allowed to stave off execution of the judgment pending appeal." *Olympia Equipment Leasing Co. v. Western Union Telegraph Co.,* 786 F.2d 794, 798 (7th Cir. 1986). The question of the adequacy of an appeal bond is to be determined "flexibly according to the unique circumstances of each case." *Morgan Guaranty Trust Co. v. Republic of Palau,* 702 F.Supp. 60, 65 (S.D.N.Y. 1988). Where an appeal bond will prejudice the interests of other parties interested in the proceeding, the requirement of an appeal bond in the full amount of the judgment is often relaxed and a partial bond required instead. *See, e.g., Miami Int'l Realty Co. v. Paynter,* 807 F. 2d 871 (10th Cir. 1986) ($500,000 in insurance proceeds to secure $2.1 million judgment); *Trans World Airlines, Inc. v. Hughes,* 314 F. Supp. 94 (S.D.N.Y. 1970) ($75 million bond to secure $145 million judgment); *C. Albert Sauter Co., Inc. v. Richard S. Sauter Co., Inc.*, 368 F. Supp. 501 (E.D. Pa. 1973) ($100,000 bond plus stock and other conditions to secure $1.2 million judgment). As the United States Court of Appeals for the Second Circuit has recognized, "an inflexible requirement" that an appeal bond be in the full amount of the judgment "can in some circumstances be irrational, unnecessary, and self-defeating." *Texaco, Inc. v. Pennzoil Co.,* 784 F.2d 1133, 1154 (2d Cir. 1986), *rev'd on other grounds,* 481 US 1 (1987).

Ordinarily, the interests sought to be protected by a motion to reduce an appeal bond are those of the party who is required to produce the appeal bond. By definition such a party will have been found to be a wrongdoer. In this case, however, the States are not seeking to protect the interest of a wrongdoer; rather, they seek to protect the interests of innocent third parties—the States themselves and their citizens, including their young people, who are the beneficiaries of the State programs supported by the payments that are threatened.

Courts have recognized the need to protect ongoing functions of governmental parties as an especially important interest, and have reduced appeal bonds to accommodate that interest even where such reduction has left a substantial portion of the judgment unsecured. An appeal bond may be reduced to protect governmental interests even in cases where the governmental party is itself the alleged wrongdoer. For example, in *Morgan Guaranty Trust Co. v. Republic of Palau,* the court reduced an appeal bond that would have created economic hardship for the Government of Palau, finding that "the balance of the public interest of Palau predominates over the financial interest of . . .[private commercial] Banks." 702 F. Supp. at 66. In that case, the Government of Palau—a foreign government—was itself the party that would have been required to post the bond, and the bond was reduced to accommodate its governmental interests. The governmental interests threatened here—those of domestic third-party governmental entities innocent of misconduct—are far more compelling.

B. If the appeal bond prevents payment to the States, it could threaten irreparable injury to important governmental interests.

Based on the notification by Philip Morris to State Attorneys General, the $12 billion appeal bond threatens the April 15 payment and thus would disrupt vital governmental programs of the States.[7] As noted above, the MSA requires Participating Manufacturers to make billions of dollars in payments to the States. The MSA payments made by the four Original Participating Manufacturers, which are to be made in perpetuity, were estimated to total approximately $206 billion through 2025. The Original Participating Manufacturers make Annual Payments to the States on or before April 15 of each year. The payment due to the States from the OPMs on April 15, 2003 is approximately $4.9 billion. Philip Morris's share of the payments is approximately $2.6 billion, more than half the total amount. The obligations of the OPMs under the MSA are several and not joint, and if Philip Morris defaulted on its payment the other OPMs would not be obligated to make up the difference. Thus, if Philip Morris failed to make its payment on April 15, the States would be left with a revenue shortfall of $2.6 billion. Although the States would immediately file suit to recover any such payments and believe they would be entitled to judgment on such claims, prompt satisfaction of these claims would be unlikely. Thus, if Philip Morris fails to make its $2.6 billion payment to the States on April 15, 2003, the States face a substantial, immediate, and unexpected revenue shortfall.

As noted above, Philip Morris has advised the States that "because of the extraordinary amount of the bond presently required [in this case], it is presently

[7] The need to post an appeal bond in this case would not constitute legal justification for not making the April 15 payment, but the States' ability to obtain prompt payment in the event the April 15 payment obligation is breached is questionable.

uncertain whether Philip Morris will be able to make the Section IX(c) payment on April 15." Philip Morris has further advised the States that it is not financially able to post the $12 billion bond. Independent financial analysts have also expressed doubt about Philip Morris's ability to post the bond. In announcing a downgrading of securities of Philip Morris's parent company, Altria Group, on March 31, the financial rating agency Moody's Investors Services stated, "despite Altria's significant financial resources, it is highly unlikely that these resources would be sufficient to immediately meet a $12 billion bonding requirement."[8] If the $12 billion bond impels Philip Morris to seek bankruptcy protection before it makes its April 15 payment to the States, the bond would be self-defeating: it would severely damage vital State interests without providing the security the plaintiffs are seeking.

1. Failure by Philip Morris to make its $2.6 billion payment on April 15, 2003 would irreparably injure vital public health and safety interests of the States.

Revenues from MSA payments account for an important portion of total State revenues. The MSA does not restrict the uses to which States may put their MSA payments, but more than 50% of MSA payments are being used to support public health and education programs. *See* note 6, above.

Many States have used MSA payments to support aggressive tobacco prevention programs, particularly programs targeted at reducing youth smoking. These programs have borne fruit. Since the MSA was executed, youth smoking rates, which had increased during most of the 1990s, have fallen appreciably. According to an authoritative recent study, between 2001 and 2002 the proportion of teens saying they

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[8] Moody's Investor Services, Rating Action: Altria Group, Inc., March 31, 2003,

had ever smoked cigarettes fell by 4 or 5 percentage points in each grade surveyed (8, 10, and 12)—more than in any recent year.[9] The reductions in youth smoking have been most dramatic in States that have used tobacco settlement funds to support programs specifically designed to discourage youth smoking. For example, in Mississippi, which ranks third nationally in settlement funds spent for tobacco prevention, from 1999 to 2001 smoking among public high school students declined by 25 percent.[10] In the State of Washington, which has an active Tobacco Prevention and Control program funded primarily by MSA payments, a survey of 137,000 students conducted in 2002 showed sharp declines in youth smoking, far in excess of the national average.[11] The MSA and the other State settlements have given impetus to important programs that are in fact making progress.

Tobacco prevention, public health, and education programs are all imperiled by the alarming State fiscal crisis. The shortfall in State revenues affects virtually every state and has been widely documented. *See, e.g.*, The Fiscal Survey of States, National Governors Association, National Association of State Budget Officers; The State Fiscal

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attached at Tab C.

9 Monitoring the Future Survey, issued jointly by the National Institute on Drug Abuse and the University of Michigan, December 13, 2002.

10 Show Us the Money: A Report on the States' Allocation of the Tobacco Settlement Dollars. Campaign for Tobacco Free Kids, American Lung Association, American Cancer Society, American Heart Association, SmokeLess States National Tobacco Policy Initiative, January 22, 2003.

11 Declines in smoking rates ranged from 36 percent for twelfth-graders to 53 percent for sixth-graders. The national rate of decline for grades 9-12 was 22 percent. Washington State Department of Public Health, www.doh.wa.gov/Tobacco/program/youthsurveyfact.htm.

Crisis, National Governors' Association Online, February 22, 2003; State Budget Update: February 2003 National Conference of State Legislatures.

- The National Conference of State Legislatures reports that "more than two-thirds of the states are facing gaps in their FY 2003 budgets. . . . The current cumulative budget gap is approximately $25.7 billion for FY 2003. . . . Twenty-nine states have imposed across-the-board budget cuts [including cuts in] elementary-secondary education, higher education. . . and Medicaid." (National Conference of State Legislatures, State Budget Update: February 2003.)
- The National Governors Association concludes: "States are facing a perfect storm: deteriorating tax bases, an explosion in health care costs, and a virtual collapse of capital gains and corporate profit tax revenues. The current problem is long-run and structural, and will take at least 3 to 5 years to remedy. . . . Fiscal year 2004 will be the third year in a row of major state fiscal problems, making this the worst fiscal crisis since the Second World War."
- A survey conducted by a coalition of public health organizations found that tight budgetary conditions had already led to an 11.2% reduction in funding for tobacco prevention and cessation programs in Fiscal Year 2003, with the deepest cuts coming in States with some of the nation's oldest and most successful tobacco prevention programs.[12]

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[12] Show Us the Money: A Report on the States' Allocation of the Tobacco Settlement Dollars, note 10, above.

In this climate, the unexpected loss of $2.6 billion in State revenues would be a devastating blow to many State programs. All forty-six Settling States, the District of Columbia, Puerto Rico and four US territories receive revenues from MSA payments. *See* note 13, below. The revenues are divided according to a formula. The effects on each State of a $2.6 billion revenue loss are shown at Tab A.[13]

A loss of this magnitude would inevitably have a major impact on State health programs. Many States have earmarked portions of the MSA payments for tobacco prevention programs. A loss of more than half the expected MSA payments would require cuts in those programs. For example, in Oklahoma the voters adopted an initiative establishing a Tobacco Settlement Endowment Trust Fund, the income from which can be used only for health, education, and tobacco prevention. Failure to receive the April 15 payment from Philip Morris would reduce the amount Oklahoma would receive by $26.9 million. In Arizona, all MSA payments are used to fund the State's indigent health care program. Failure to receive the April 15 payment from Philip Morris would reduce payments to this program by $38.3 million. In Washington, MSA funds are used for indigent health care, medical assistance for children, local public health programs, immunization, and tobacco control and prevention programs. Failure to receive the April 15 payment from Philip Morris would reduce payments to these programs by $53.2 million. In Maine, which ranks first in the nation in per capita funding of tobacco prevention programs, MSA funds provide the sole source of support for such

[13] Payments to the four States that have separate agreements with the tobacco companies would be similarly affected. As noted above, several States have securitized their payments and in those jurisdictions the interests of bondholders may be affected.

programs and a loss of payments from Philip Morris would therefore cut funding for such programs by more than 50%.

2. Any substantial delay in the receipt of Philip Morris's payment would severely prejudice the States.

Not only is it vital for the States to receive Philip Morris's payment, but any substantial delay in the receipt of that payment would be severely prejudicial to the States. Most States operate on a fiscal year or biennium budget that ends on June 30. State expenditure authorization is limited to the amounts of funds actually received by the State during that fiscal period. States cannot deficit spend. Any delay in receipt of funds beyond the current budget period therefore would have a critical impact on State public health programs funded by MSA payments. If the States do not receive payments as scheduled during the fiscal year, i.e., by June 30, they will be forced to cut programs or reappropriate funds from other State priorities to cover the revenue shortfall.

3. This Court should act on the request to reduce the appeal bond before April 15.

If this Court exercises its discretion to permit reduction of the appeal bond, it should do so before April 15 to ensure that Defendant will make its $2.6 billion payment to the States on April 15. If this Court decides not do so, the States respectfully request that it issue its decision as soon as possible before April 15 in order to permit appropriate appellate consideration of the issue of whether the bond should be reduced before the payments to the States are threatened and serious harm to State health and safety programs becomes a reality.

Respectfully submitted,

Losses by State if Philip Morris IX(c) Payment due April 15, 2003 is not made

STATE	STATE'S LOSS
Alabama	$41,868,372.93
Alaska	$8,844,980.53
Arizona	$38,183,262.08
Arkansas	$21,452,335.59
California	$330,670,045.20
Colorado	$35,514,289.02
Connecticut	$48,096,475.87
Delaware	$10,245,250.26
D.C.	$15,728,340.43
Georgia	$63,586,525.26
Hawaii	$15,592,245.55
Idaho	$9,410,896.15
Illinois	$120,575,486.50
Indiana	$52,844,265.61
Iowa	$22,530,071.38
Kansas	$21,597,544.39
Kentucky	$45,625,542.84
Louisiana	$58,428,417.22
Maine	$19,931,216.98
Maryland	$58,560,641.66
Massachusetts	$104,636,010.28
Michigan	$112,743,946.88
Missouri	$58,927,066.49
Montana	$11,004,042.74
Nebraska	$15,413,964.44
Nevada	$15,801,313.99
New Hampshire	$17,252,052.28
New Jersey	$100,180,531.92

STATE	STATE'S LOSS
New Mexico	$15,450,399.42
New York	$330,620,190.64
North Carolina	$60,421,457.32
North Dakota	$9,482,154.71
Ohio	$130,504,498.10
Oklahoma	$26,842,734.71
Oregon	$29,731,864.22
Pennsylvania	$148,881,283.24
Rhode Island	$18,624,358.49
South Carolina	$30,475,218.99
South Dakota	$9,039,981.72
Tennessee	$63,235,154.73
Utah	$11,525,484.59
Vermont	$10,652,387.24
Virginia	$52,972,290.60
Washington	$53,192,835.65
West Virginia	$22,965,130.43
Wisconsin	$53,679,381.38
Wyoming	$6,433,759.50
American Samoa	$394,219.97
N. Mariana Island	$218,589.10
Guam	$568,314.57
U.S. Virgin Island	$449,719.57
Puerto Rico	$29,048,428.71

Total: $2,590,654,972.07

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March 27, 2003

Honorable Christine O. Gregoire
Attorney General
Office of the Attorney General
1125 Washington Street, SE
Olympia, WA 98504-0100
VIA FACSIMILE: 360/664-0228

Dear General Gregoire:

As you are aware, the trial court in Madison County, Illinois, in an action entitled *Price vs. Philip Morris Incorporated*, recently entered a judgment after a bench trial against Philip Morris USA in the amount of $10.1 billion, of which $7.1 billion is compensatory damages (which includes an award to plaintiffs' counsel of $1.775 billion) and $3 billion is punitive damages payable to the State of Illinois. In addition, Judge Byron ordered that Philip Morris USA post an appeal bond in the amount of $12 billion.

On April 15, 2003, payment is due by Philip Morris USA to the Settling States pursuant to Section IX (c) of the Master Settlement Agreement in the aggregate amount of approximately $2.5 billion. Philip Morris USA will, as it always has in the past, endeavor to meet all of its payment obligations under the MSA, including its obligation to make the $2.5 billion payment due on April 15, 2003. However, because of the extraordinary amount of the bond presently required by the Madison County trial judge, it is presently uncertain whether Philip Morris USA will be able to make the Section IX (c) payment on April 15.

Philip Morris USA is not financially able to post the enormous bond that the Madison County court has demanded. In this regard, we are prepared to share with you, subject to appropriate confidentiality, non-public Philip Morris USA financial information demonstrating that Philip Morris USA is unable to post a bond in such an amount. Unfortunately, efforts to date have been unavailing in persuading the Illinois legislature to pass reasonable bond cap legislation. We are available at any time to discuss with you all measures that are being taken to avoid a failure of payment on April 15.

Very truly yours,

Denise F. Keane

Denise F. Keane

Rating Action: Altria Group Inc.

MOODY'S DOWNGRADES ALTRIA (SENIOR UNSECURED TO Baa1; SHORT TERM TO PRIME-2) AND KRAFT (SENIOR UNSECURED TO A3; SHORT TERM TO PRIME-2); ALL RATINGS UNDER REVIEW FOR POSSIBLE FURTHER DOWNGRADE

Approximately $20 Billion Of Debt Securities Affected

New York, March 31, 2003 -- Moody's Investors Service downgraded the long and short-term ratings of Altria Group, Inc. ("Altria"), Kraft Foods Inc. ("Kraft"), Kraft Foods North America, Inc. ("KFNA"), and Philip Morris Capital Corp. ("PMCC") and maintained these ratings under review for possible further downgrade.

Ratings downgraded and kept under review for possible further downgrade are as follows:

Altria:

Senior unsecured rating, to Baa1 from A2;

Commercial paper rating, to Prime-2 from Prime-1.

PMCC:

Senior unsecured rating, to Baa1 from A2

Commercial paper rating, to Prime-2 from Prime-1

Kraft Foods Inc.:

Senior unsecured rating, to A3 from A2;

Commercial paper rating, to Prime-2 from Prime-1

Kraft Foods North America:

Senior unsecured rating to A3 from A2

The downgrades reflect:

(1) The inability of Philip Morris USA to satisfy a worst-case bonding requirement in the Miles case on the basis of its existing liquidity resources;

(2) The apparent inability of Altria to immediately support Philip Morris USA given Altria's current availability under its liquidity lines;

(3) The rise in the overall litigation risk profile of Altria;

(4) Kraft's and KFNA's increased risk of additional liabilities as a result of the heightened litigation risk profile of its 84% parent, Altria.

Moody's review will continue to focus on the following factors:

(1) The impact of the legal bonding eventually required of Philip Morris USA on the financial flexibility of Altria and Kraft;

(2) Any structural subordination of existing indebtedness possibly induced by any pledge of assets for the purpose of bonding;

(3) The level of additional liabilities that could result for Altria as a result of possible efforts to resolve the Miles case;

(4) The level of additional liabilities that could result for Kraft however the current bonding requirement is resolved;

(5) Prospects for future adverse decisions against Philip Morris USA that could also significantly constrain the financial flexibility of Altria and Kraft.

On March 24, 2003, Moody's placed the ratings of Altria, Kraft, KFNA, and PMCC under review for possible downgrade, following a $10.1 billion verdict against Philip Morris USA -- Altria's domestic tobacco subsidiary -- in a consumer fraud class-action case in Illinois (the Miles case). The judge has granted a 30-day stay. At the conclusion of the stay period, the judge will enter the final judgment. Under a worst-case scenario, Philip Morris USA could have to post a bond for $12 billion, including statutory interest.

The downgrade of Altria's ratings to Baa1/Prime-2 and the decision to maintain these ratings on review reflect the fact that this worst-case bonding requirement exceeds Philip Morris USA 's current liquidity capacity. Altria's committed bank facilities, which consist of a $5 billion facility due in July 2006 and a $3 billion facility due in July 2003, significantly exceed its outstanding commercial paper and any incremental short-term funding needs that it may have in the coming months. Additionally, while the most restrictive of its public debt indentures limit the amount of assets that it can pledge to 5% of consolidated net worth, Altria may have the flexibility to utilize certain assets to help meet its bonding requirements. However, despite Altria's significant financial resources, it is highly unlikely that these resources would be sufficient to immediately meet a $12 billion bonding requirement. Altria's ratings could be lowered again in the absence of financial arrangements to meet the current bonding requirement or to otherwise resolve the Miles case in a manner that is consistent with the current rating level, or unless the bonding requirement is very significantly reduced.

Moody's believes that Philip Morris USA is most likely to pursue one or several of the following four options: (a) seek judicial relief from a higher court, (b) seek an agreement with the judge presiding over the case that would reduce the bonding amount or change the nature of the assets pledged to the court, (c) seek legislative relief, and/or (d) seek support from Altria. Additionally, Philip Morris USA, Altria and plaintiffs' attorney have the option of resolving the Miles case through a settlement. Until these various options have been exhausted, Moody's believes that the possibility of a bankruptcy filing by Philip Morris USA is still low. However, Moody's will continue to monitor developments on a day-by-day basis and could adjust its view. If Philip Morris USA failed to make the $2.5 billion payment due April 15, 2003 under the Master Settlement Agreement, the rating could be materially downgraded.

The downgrade of Altria's long-term rating to Baa1 reflects not only the liquidity risk that the company currently faces and the possible cost of resolving the Miles case but also the risk of further verdicts against the company where the bonding requirement is similarly crippling. While Philip Morris USA has often prevailed at the lower court level or on appeal, there is a risk that the sheer number of legal claims against it could from time to time result in bonding requirements that stretch its liquidity capacity and that of its parent. This risk is increased by Philip Morris USA's position as the largest domestic company in the cigarette market, which makes it a more likely target of plaintiffs and plaintiffs' attorneys.

The downgrade of PMCC's long and short-term ratings is tied to the support agreement provided by Altria to PMCC, which is the basis for PMCC's ratings. Under this support agreement, Altria commits to make contributions to PMCC in order to maintain a minimum fixed charge coverage ratio.

The downgrades of Kraft and KFNA reflect their continued exposure to the risk of additional draconian bonding requirements or legal judgments against Philip Morris USA, which could affect Kraft as a result of its 84% ownership by Altria. However, Kraft retains significant operating strengths, and this downgrade is not a reflection of its otherwise strong operating performance and cash flow. Moody's also believes that the risk that Kraft could become directly liable in tobacco-related claims is remote, given its lack of direct relationship with Philip Morris USA, which is the defendant in tobacco claims. These factors contribute to the downgrade of Kraft being of a smaller magnitude than that for Altria. Should the Miles bonding issue be resolved in a manner that does not significantly impact Kraft, its ratings would likely be confirmed.

Based in New York, New York, Altria is a holding company, controlling 100% of Philip Morris USA, a domestic tobacco manufacturer; 100% of Philip Morris International, an international tobacco manufacturer; 100% of Philip Morris Capital Corp., a subsidiary engaged in leasing activities; and 84% of Kraft Foods Inc., a packaged food manufacturer.

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